UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:06-cv-00400-BR

SUELLEN E. BEAULIEU, et al, **Plaintiffs** **v.** **EQ INDUSTRIAL SERVICES, INC., et al,** **Defendants.**	**MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND RELATED MATTERS** **This Document Relates To:** **ALL CASES**

MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND RELATED MATTERS

Plaintiffs submit this memorandum in support of their motion for certification of a settlement class in conjunction with a Preliminary Settlement Agreement ("PSA") entered into between Plaintiffs and defendants, EQ Industrial Services, Inc. and EQ Holding Company (collectively "EQIS"). In further support of this motion, Plaintiffs incorporate herein by reference their Memorandum in Support of Plaintiffs' Motion for Class Certification and all exhibits attached thereto (DE # 139, 140, 140-2 through 140-47, 141) and Plaintiffs' Reply Memorandum in Support of Class Certification and all exhibits attached thereto (DE # 223 through 266)

By separate joint motion, Plaintiffs and EQIS seek approval of the settlement.[1] As the PSA is contingent upon certification of a settlement class, the Court's granting of this motion is an integral component of the settlement. Plaintiffs also incorporate by

[1] Joint Motion for Preliminary Approval of Class Settlement, filed concurrently herewith.

reference their Memorandum in Support of Joint Motion for Preliminary Approval of Class Settlement, and all exhibits filed in support thereof.

Approval of class settlements is a two-stage process. The court first makes an initial determination of *prima facie* fairness at a preliminary approval hearing. Then, after notice to the class and opportunity to opt out, the Court conducts a final fairness hearing. If a class has not theretofore been certified, the Court considers certification of a settlement class at the preliminary approval hearing. The *Manual for Complex Litigation*, *Fourth*, (*MCL 4th*), § 21.632 states that “If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined.” Professor Newberg states:

> As a practical matter, the decision of the court to permit notice of the proposed settlement to issue inherently carries with it a preliminary determination that Rule 23 criteria will be satisfied if the settlement is approved. In fact, one part actually cannot take place without the other. A class settlement cannot technically be approved unless, by definition, a class is upheld.
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> 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.27, p. 54 (4th ed. 2002).

A. *Settlement Class Definition*

The settlement class sought to be certified is defined as follows:

All natural persons, whether minor or adult, or Businesses including those falling within one or more of the following sub-classes, including any person or entity claiming by, through or under a Class Member (as defined in the PSA), who seek compensation for damages from a fire at the facility in Apex, North Carolina owned and/or operated by EQ Holding Company and EQ Industrial Services, Inc. (collectively referred to as EQIS), and subsequent evacuation from October 5-7, 2006 (“ the Incident”):

Subclass 1– Recommended Evacuation Zone:
All natural persons, including minors and adults, who, on October 5, 2006, resided within the geographic boundaries of the area of the

Recommended Evacuation Zone (as defined in the PSA and the Notice) who evacuated in response to the Incident.

Subclass 2 – Secondary Evacuation Zone:
All natural persons, including minors and adults, who, on October 5, 2006, resided outside the geographic boundaries of the Recommended Evacuation Zone, but within the geographical boundaries of the Secondary Evacuation Zone (as defined in the PSA and the Notice), who evacuated in response to the Incident.

Subclass 3 – Business Loss Subclass
All Businesses that were physically located within or geographically contiguous to the Recommended Evacuation Zone (as defined in the PSA and the Notice) on October 5, 2006, that were forced to cease business operations in response to the Incident and sustained provable economic losses as a result of the Incident .

Excluded from the class are those persons or Businesses who would otherwise be Class Members, but who or which are: (i) EQIS or any of their employees, agents, insurers, contractors, and subcontractors (except other defendants in the Litigation), including employees of EQIS's agents, contractors or subcontractors, (ii) the Court and Court personnel and their immediate families, (iii) the attorneys for any of the Parties and their immediate families; and (iv) Opt Outs.

As explained in Plaintiffs' briefing in support of their motion for certification of the litigation class (DE # 137), this class definition is "precise, objective, and presently ascertainable". *MCL 4th § 21.222.*

B. ***General Requirements for Certification of a Settlement Class***

In order to certify a settlement class, the Court must examine whether the settlement class complies with Rule 23 *Fed. R. Civ. P.* See: *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997), in which the Supreme Court approved the concept of certification of classes for settlement purposes only, and held that courts must ensure that the class complies with the requirements of Rule 23(a) and at least one of the subsections of Rule 23(b). The Supreme Court excluded from the analysis whether or not the case, if tried, would present 'intractable management problems', since the settlement precludes any trial.

In addition, the Supreme Court pointed out that the fact of settlement itself is relevant to the decision to certify a class. *Amchem,* 521 U.S. at 619. Courts in this Circuit have certified classes at the settlement stage, noting that such a certification does not present the same problems that certification of a litigation class proposing the same class definition would present. See: *In re Serzone Products Liability Litigation,* 231 F.R.D. 221, 239 (S.D.W.Va. 2005) citing *Gunnells v. Healthplan Services, Inc.*, 348 F.3d 417, 440 (4th Cir.2003), in which the Fourth Circuit said that the settlement is relevant to a finding of predominance.

C. ***Plaintiffs' Proposed Settlement Class Meets the Requirements of Federal Rule of Civil Procedure 23(a)***

Rule 23(a) provides as follows:

> **(a) Prerequisites to a Class Action.**One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The four prerequisites of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation, are satisfied here. See: Plaintiffs' memoranda and exhibits in support of their motion for certification of the litigation class.

1. ***Numerosity***

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." In order to demonstrate numerosity, plaintiffs need not prove that joinder is impossible; rather, plaintiffs "need only show that it would be extremely difficult or inconvenient to join all members of the class." Courts in this Circuit have determined that as few as 18 class members were sufficient to satisfy this criterion. *Cypress v. Newport News General & Nonsectarian Hospital Ass'n*, 375 F.2d 648, 653 (4th Cir.1967). See also: *Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir.1984) (between 46 and 60 members sufficient), *cert denied*,470 U.S. 1028 (1985); *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir.) (74 members sufficient), *cert denied*,469 U.S. 827 (1984); *Lilly v. Harris-Teeter Supermarket,* 720 F.2d 326, 333 (4th Cir.1983) (229 members sufficient), *cert denied*,466 U.S. 951 (1984); *Harris v. McCrackin,* 2006 WL 1897038 (D.S.C. 2006).

The size of the proposed settlement class here is in excess of 13,000 people and 450 businesses. It would be wholly impracticable, if not impossible, to join individual members of a class of this size.

2. *Commonality*

Rule 23(a)(2). requires the existence of one or more "questions of law or fact common to the class". The Fourth Circuit has held that "[i]n a class action brought under Rule 23(b)(3), the 'commonality' requirement [of Rule 23(a)(2)] is subsumed under, or superseded by, the more stringent Rule 23(b)(3) requirement that questions common to the class 'predominate over' other questions." *Lienhart v. Dryvit Syst., Inc.* 255 F.3d 138, 147 n. 4 (4th Cir.2001) (citing *Amchem,* 521 U.S. at 609, 117 S.Ct. 2231). Because this is a class action brought under Rule 23(b)(3), these two factors will be discussed in more detail in the predominance section of this opinion.

In the present case, Plaintiffs have raised common questions of law and fact: (1) the negligence of EQIS; (2) whether EQIS is guilty of trespass, (3) whether the EQIS is guilty of nuisance, (4) whether EQIS's negligence, trespass and/or nuisance was a proximate cause of the damages suffered by the Plaintiff class; and (5) liability for and quantification of punitive damages. Plaintiffs have met the minimal showing required to establish commonality of legal and factual questions.

3. *Typicality*

Rule 23(a)(3) requires that the claims and defenses of the representative parties be typical of the claims and defenses of the class as a whole.. Professor Newberg says:

> The typicality prerequisite assures that the class representative shares the issues common to other class members. Thus, to some extent, it overlaps with the Rule 23(a)(2) requirement that there be questions of law or fact common to the class, except that each test proceeds from a different perspective. The typicality criterion focuses on whether there exists a relationship between the plaintiff's claim and the claims alleged on behalf of the class.
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> *Newberg, supra*, § 3:13

In determining whether the claims of the class representatives are typical of the class, the Court looks to the nature of the claims asserted (i.e. the legal theory) rather than any specific factual differences amongst class members. See: *Woodard v. Online Info. Servs.*, 191 F.R.D. 502, 505 (E.D.N.C. 2000) (citing *Holsey v. Armour & Co.*, 743 F.2d 199, 216-217 (4th Cir. 1984); *In re Polyester Staple Antitrust Litigation*, 2007 WL 2111380 (W.D.N.C., July 19, 2007) at p. 10.

Here, the named class representatives, as well as the class at large, seek damages from widespread evacuations that resulted from a single, discrete event: a massive fire at EQIS's facility in Apex. Proof of common facts and legal theories for EQIS's alleged liability to the class representatives, is identical for that of the class, and will typify the class as a whole. The fact that some plaintiffs may have been damaged to a slightly greater or lesser extent will not defeat satisfaction of Rule 23(a)(3). See: *Roger v. Electronic Data Systems Corporation*, 160 F.R.D. 532 (E.D.N.C., 1995); *Haywood v. Barnes*, 109 F.R.D. 568, 578 (E.D.N.C., 1986); *In re Polyester Staple Antitrust Litigation*, 2007 WL 2111380 (W.D.N.C., July 19, 2007) at p. 10.

4. *Adequacy*

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." This requirement involves a two-part test: (1) whether plaintiffs have interests antagonistic to the interests of the other class members; and (2) whether the proposed class counsel has the necessary qualifications and experience to lead the litigation. : *In re Serzone Products Liability Litigation,* 231 F.R.D. 221, 238 (S.D.W.Va. 2005).

In *Gunnells v. Healthplan Services, Inc.,* 348 F.3d 417, 430-431 (4th Cir.2003), the Fourth Circuit said: "For a conflict of interest to prevent plaintiffs from meeting the requirements of Rule 23(a), the conflict 'must be fundamental. It must go to the heart of the litigation' 6 Alba Conte & Herbert B. Newberg *Newberg on Class Actions* § 18:14 (4th ed. 2002)" Mere speculative conflicts are not sufficient to defeat the adequacy requirement. *Chisholm v. U.S. Postal Service,* 665 F.2d 482 (4th Cir. 1981)

In this case, no such fundamental conflict exists. The named plaintiffs "share the same common objectives and the same factual and legal positions" as the class. They have the same interest in establishing the liability of EQIS for both compensatory and punitive damages. The named Plaintiffs' affidavits and depositions are before the Court. They have sworn that they have no conflicts with the class, and that they expect no additional remuneration beyond their own damages. They should be appointed as Class Representatives for the settlement class.

The second prong of the adequacy test, goes to the vigor with which the class representatives have prosecuted this lawsuit. Here the Court's focus is "primarily on class counsel, not on the plaintiff, to determine if there will be vigorous prosecution of the class action. Plaintiffs are generally laypeople and they are not expected to prosecute their own action or that of the class." *Newberg*, *supra*, § 3:24, citing *Kirkpatrick v. J.C. Bradford & Co.* 827 F.2d 718, 726 (11th Cir. 1987), and *Dolgow v. Anderson*, 43 F.R.D. 472 (E.D. N.Y. 1968) "Competency of counsel is assurance of vigorous prosecution."

The members of the court-appointed interim Plaintiffs Management Committee have all submitted affidavits in support of the earlier-filed motion for class certification, attesting to their qualifications. It is clear from those affidavits, as well as those filed with the concurrent joint motion for preliminary approval of this settlement, that counsel have the requisite skill and experience in class actions and complex mass tort cases to assure vigorous prosecution of this case. The Court's experience with the performance of Plaintiffs' counsel to date should justify that conclusion, and EQIS has certainly never challenged their qualifications.

The Parties move the Court, pursuant to Rule 23(g), to approve the appointment of the following attorneys Class Counsel to represent the settlement class: Henry T. Dart, Donald J. Dunn, M. David Karnas, J. Michael Malone, Roger W. Orlando, Jesse S. Shapiro and Robert E. Zaytoun. These attorneys have been intimately involved with the litigation from its inception; they are familiar with the law, and have worked tirelessly to identify and investigate potential claims in this Litigation. Class Counsel have vigorously advocated on behalf of the Plaintiffs and the Class during the difficult, complex and protracted negotiations with counsel for EQIS. All are intimately familiar with the terms and procedures set forth in the PSA, and therefore, will be able to assist the members of the putative Class with preparing submissions for settlement and answering and questions Class members and the community may have. As their affidavits will attest, Class Counsel have extensive experience in prosecuting and negotiation the settlement of mass-accident class actions. They have devoted considerable resources toward the prosecution of this Litigation, and will continue to do so against all remaining defendants.

The Parties also move for the appointment of Suellen E. Beaulieu, Michael Borden, Betsy Borden, Lisa Carley, Clifford Randy Wilder, Tara Wilder, Nancy Hackney, Anne M. Acosta, George Acosta, and Denise Hatzidakis, individually and on behalf of Hatzidakis, LLC d/b/a Xios Restaurant, as Class Representatives to represent the settlement class. As explained in their Memorandum in Support of Plaintiffs' Motion for Class Certification and all exhibits attached thereto (DE # 139, 140, 140-2 through 140-47, 141) and Plaintiffs' Reply Memorandum in Support of Class Certification and all exhibits attached thereto (DE # 223 through 266), these Plaintiffs meet the qualifications for appointment as Class Representatives, and will adequately represent the class.

In the context of class action settlements, the Court need not consider the "vigor" with which the Class Representatives and Class Counsel will prosecute this action in the future because, to borrow the Supreme Court's rationale in *Amchem*: " the proposal is that there be no trial." The proof here is in the pudding. This settlement would not have come about except through vigorous prosecution.

B. ***Plaintiffs' Proposed Settlement Class Meets the Requirements of Federal Rule of Civil Procedure 23(b)(3)***

Rule 23(b)(3) provides as follows:

> **(b) Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> …
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Rule 23(b)(3) asks whether: (1) issues of law and fact common to members of the class predominate over questions only affecting individual members (Predominance); and (2) whether a class action is the superior method of resolving the dispute (Superiority). As stated by the Supreme Court in *Amchem, supra,* Rule 23(b)(3)(D) considerations do not factor into the analysis in the context of certification of a settlement class "for the proposal is that there be no trial."

1. ***Issues of law and Fact Predominate***

To satisfy the predominance requirement in the context of a class settlement, the parties must do more than merely demonstrate a "common interest in a fair compromise"; instead, they must provide evidence that the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem Prod., Inc. v. Windsor,* 521 U.S. 591, 623 (1997).

In the context of mass tort litigation, such as the instant case, the Fourth Circuit in *Gunnells v. Healthplan Services, Inc., supra,* at p. 424. said:

> However, as the Supreme Court has noted, the predominance and superiority requirements in Rule 23(b)(3) do not foreclose the possibility of mass tort class actions, but merely ensure that class certification in such cases "achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem,* 521 U.S. at 615, 117 S.Ct. 2231 (quoting Adv. Comm. Notes, 28 U.S.C.App. at 697). For these very reasons, we have expressly "embraced the view that the mass tort action for damages may be appropriate for class action, either partially or in whole." *Central Wesleyan Coll. v. W.R. Grace & Co.,* 6 F.3d 177, 185 (4th Cir.1992) (citation, internal quotation marks, ellipses, and alterations omitted).

One of the primary purposes of a Rule 23(b)(3) certification is to provide "a single proceeding in which to determine the merits of the plaintiffs' claims, and therefore protect(s) the defendant(s) from inconsistent adjudications." 5 *Moore's Federal Practice* § 23.02, (1999). The Fourth Circuit discussed this very issue in Gunnells:

> This protection from inconsistent adjudications derives from the fact that the class action is binding on all class members. *See* Fed.R.Civ.P. 23(c)(2)(B). By contrast, proceeding with individual claims makes the defendant vulnerable to the asymmetry of collateral estoppel: If TPCM lost on a claim to an individual plaintiff, subsequent plaintiffs could use offensive collateral estoppel to prevent TPCM from litigating the issue. *See Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 331, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979) (concluding that the use of offensive collateral estoppel should not be precluded in federal courts). A victory by TPCM in an action by an individual plaintiff, however, would have no binding effect on future plaintiffs because the plaintiffs would not have been party to the original suit. *See Allen v. McCurry,* 449 U.S. 90, 95, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980) ("[T]he concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue.") (citing *Montana v. United States,* 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979)).

> Class certification thus promotes consistency of results, giving defendants the benefit of finality and repose.[2]

Here, certification of a settlement class will give EQIS the ultimate protection from possible inconsistent adjudications: dismissal with prejudice with *res judicata* effect as to the entire class.

This lawsuit arises from a single catastrophic event, a massive fire that resulted in a two day evacuation of thousands of residents and businesses of Apex, North Carolina. As stated previously, there are legal and factual issues that are common to the entire class: (1) the respective negligence of the defendants; (2) whether EQIS defendants are guilty of trespass, (3) whether the EQIS defendants are guilty of nuisance, (4) whether defendants' negligence, trespass and/or nuisance was a proximate cause of the damages suffered by the Plaintiff class; and (5) liability for and quantification of punitive damages.

As Chief Judge Haden said in *Black v. Rhone-Poulenc, Inc.*, 173 F.R.D.156, 164-165 (S.D.W.Va. 1996):

> All of these issues (liability and general causation) are substantial and overriding on the resolution of the litigation as a whole. While there are individual issues of exposure, causation and some damage elements, the Court cannot conclude at this juncture that individual issues predominate. Resolution of the common issues is what, practically speaking, will send a predictive message to both sides about the ultimate course of the litigation. For instance, if the jury in a common issues trial found Defendant (1) acted recklessly; (2) engaged in outrageous conduct; and (3) behaved in a fashion justifying punitive damages, one can imagine readily the impact such findings would have on the amicable resolution of the more fluid damages issues. On the other hand, a jury finding largely exonerating Defendant on the liability issues would sound the death knell for Plaintiffs' case. Either way, findings on the common issues may advance the litigation greatly. Accordingly, the Court finds Plaintiffs have met their burden of showing common issues predominate.

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[2] Gunnells v. Healthplan Services, Inc., *supra*, at p. 427.

Just as in *Black* the overriding issues in this case are common liability issues. As explained in their Memorandum in Support of Plaintiffs' Motion for Class Certification (DE # 139) and Plaintiffs' Reply Memorandum in Support of Class Certification (DE # 223) minor variations in Plaintifffs' and class member's damages do not predominate, especially, as here, where the damages are all essentially the same. There are no overwhelming individual issues, such as in fraudulent misrepresentation cases, or where there are individual statute of limitation defenses.

2. *Superiority of the Settlement Class*

Rule 23(b)(3) lists the factors to consider in determining superiority:

> The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Settling this action as a class is far superior to the risk of litigating, even on a class-wide basis. A class action ensures greater efficiency and consistency of results. Most importantly, class treatment in this context is also beneficial because it grants plaintiffs a definite recovery and dismisses EQIS from this Litigation with prejudice. As stated in *In re Serzone Products Liability Litigation*, 231 F.R.D. 221, 240-241 (S.D.W.Va. 2005)

> Absent the class procedures, many Class Members may be effectively foreclosed from pursuing their claims. Class actions are often the only means for assuring that defendants who have harmed consumers will not benefit from their unlawful conduct simply because of the magnitude of the misconduct and aggregated harm compared to the small magnitude of individual harm. *Gunnells v. Healthplan Serv., Inc.*, 348 F.3d 417, 426 (4th Cir.2003). The individual harm is often too minimal to bear the high

> costs of individual litigation. *Id.* Thus, without the class device, thousands of plaintiffs could be denied their day in court. *Id.* The Supreme Court declared in *Deposit Guaranty Nat'l Bank v. Roper*, 445 U.S. 326, 339, 100 S.Ct. 1166, 63 L.Ed.2d 427 (1980) that "[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device."

a. Class Members' interest in individual control

"Among the factors generally inferred to support individual litigation in such a case are a high degree of emotional involvement, extremely large damage claims, and a desire to tailor trial tactics to individual needs." *Newberg*, *supra*, § 4:29.

In this case, the actual damages suffered by the Plaintiffs and the class are rather small in relation to the magnitude and expense of proving the common liability issues. The median amount EQIS has paid out so far was $157.08 per claimant. These are hardly amounts that a person would consider hiring a lawyer to make a claim for in an individual lawsuit, (if indeed a lawyer could be found to take such a small case). Secondly, because the class excludes persons with personal injuries, the stakes are not as high and the individual claims are, relatively speaking, small. Consequently, many class members likely would not bring individual claims in the absence of a class action.

The named plaintiffs have no particular emotional involvement in this litigation, other than to obtain just compensation for themselves and the class. The unified nature of these claims indicate that there is no tactical advantage to be gained in prosecuting one class member's claim over another.

b. Existence of other litigation

This Litigation is a consolidated action arising from five separate lawsuits filed in this Court and in Wake County Superior Court for the State of North Carolina. The state court cases were removed to this Court and all of the cases were consolidated. There is no other pending litigation, save for a recently-filed suit by Cooper Industries, Inc. for reimbursement of salaries paid its employees while their facility was closed during the Incident. While the existence of other lawsuits may suggest an interest in individual litigation, that is not the case here. All of the six pending cases are presently before this Court.

c. Desirability of concentrating litigation in one forum

This factor is only relevant when other litigation is commenced in other fora. Unlike a national class action in which suits may be filed in several states, this case involves a discrete incident in the state of North Carolina, involving only North Carolina class members, and applying only North Carolina law. This Court, along with North Carolina state court, is the only forum in which this case can be brought.

D. ***Conclusion***

The proposed settlement class is identical to the litigation class proposed by Plaintiffs in their motion for certification of a litigation class. For the reasons set forth in their memoranda in support of their motion for class certification of the litigation class, and for the reasons set forth herein, the settlement class should be certified. In addition, the proposed Class Representatives and Class Counsel should be appointed by the Court.

Respectfully submitted,

Plaintiffs' Management Committee

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND RELATED MATTERS** on the Court's electronic docketing system. By previous Case Management Order, Liaison Counsel are authorized and designated to receive filing electronically from the Court on behalf of all defendants. Therefore, the undersigned upon information and belief certifies that all counsel of record as noted below, will receive a copy of these papers through the Court's electronic notice system:

This, the 7th day of October, 2008.

ADDRESSED TO:

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